

City of Detroit


CITY COUNCIL

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TO: The Honorable Detroit City Council

FROM: David Whitaker 
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DATE: July 17, 2009

RE: **OPEN MEETINGS ACT IMPLICATIONS FOR GATHERINGS OF
CITY COUNCIL MEMBERS**

This memo from the Research and Analysis Division (RAD) is in response to an issue that arose at the July 14, 2009 Planning and Economic Development Committee. A suggestion was made that two or three Council Members gather in a private, informal setting to review materials relative to development of the Paradise Valley District. Such a gathering implicates the requirements of the Open Meetings Act (OMA), MCL 15.261 *et seq.* Therefore, RAD is recirculating the following information.

The Open Meetings Act requires the following:

- (1) **All meetings of a public body shall be open to the public and shall be held in a place available to the general public.** All persons shall be permitted to attend any meeting except as otherwise provided in this act. The right of a person to attend a meeting of a public body includes the right to tape-record, to videotape, to broadcast live on radio, and to telecast live on television the proceedings of a public body at a public meeting. The exercise of this right shall not be dependent upon the prior approval of the public body. However, a public body may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.
- (2) **All decisions of a public body shall be made at a meeting open to the public.**
- (3) **All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as provided in this section and sections 7 and 8.**
MCL 15.263 (emphasis added).

A "public body" is defined by the OMA as "any state or local legislative or governing body, including a board, commission, **committee, subcommittee**, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function" (emphasis added). Council's standing committees are each currently comprised of either two or three council members plus the council president as an *ex officio* non-voting member as provided by the Charter of the City of Detroit, section 4-106. **Two voting committee members constitute a quorum.**

The OMA defines "meeting" as "the convening of a public body at which a **quorum** is present for the **purpose of deliberating toward or rendering a decision** on a public policy" MCL 15.262(b)(emphasis added). Under these definitions, meetings of Council's standing committees are meetings of public bodies subject to the OMA.

Consequently, a meeting of two committee members (a quorum of the committee) getting together informally to discuss or review information relative to committee business is a violation of the OMA -- unless any such meeting is open to the public, properly noticed¹, and otherwise in compliance with the OMA.² The Michigan Court of Appeals has held that "if members of a public body gather, a quorum being present, for the purpose of deliberating,³ the meeting is subject to the provisions of the OMA even if there is no intention that the deliberations will lead to the rendering of a decision on that occasion. *Nicholas v Meridan Charter Township Board*, 239 Mich App 525 (2000).

These guidelines are not absolute, however. The OMA excludes "a meeting which is a social or chance gathering or a conference not designed to avoid [the] act", MCL 15.263(10), therefore evidencing a legislative intent that the OMA **does apply** to those meetings **designed** to avoid the act. *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 472 (1988). In the *Wyoming City Council* case, the court found that the body sought to intentionally avoid the OMA by deliberately dividing itself into groups of less than a quorum, which met in a series of luncheon meetings to discuss water system improvements, with combined participation of a quorum of the council. In finding a violation of the act, the court noted that to permit such meetings "would

¹ Notice of regular meetings of a public body must be posted within ten days of the first meeting of the body in each calendar or fiscal year. MCL 15.265(2); Council Rules 5.2. The City Clerk has complied with the OMA and posted notice of regular committee and formal meetings through the end of the calendar year. Additional notice is required in the event a regular meeting is rescheduled or a special session is called. MCL 15.265(4). Additional notice is also required where a *public hearing* is held at a regular meeting, in which case notice of the contents of the hearing must be given. *Cape v Howell Board of Education and City of Howell*, 145 Mich App 459, 462 (1985), citing *Haven v City of Troy*, 39 Mich App 219 (1972). This requirement is routinely met by the Clerk's regular postings of daily calendars as well as by additional publication as deemed appropriate.

² Section 15.269 of the OMA requires the keeping of minutes. Section 15.263(5) requires that "[a] person shall be permitted to address a meeting of a public body under rules established and recorded by the public body."

³ The Michigan legislature did not define what constitutes deliberating, within the context of the OMA, however, in *Ryant v Cleveland Township*, 239 Mich App 430 (2000), the Michigan Court of Appeals defined "deliberations" to include the exchanging of affirmative or opposing views, debating a matter or engaging in discussion about a matter.

circumvent the legislative principles as well as the overall objective of the OMA to promote openness and accountability in government." *Id.*

A private conference between two Council Members who do not serve on the same committee, or a conference regarding a topic that is **not** committee business does not violate the spirit of the OMA. However, in the context in which the question arose, a meeting of Council Members to review artwork for Paradise Valley (the subject of intense public interest) is appropriately conducted in public.

If further questions arise, RAD will address them as requested.